HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

W.P. NO.2688 OF 2006

Between:

Puppala Rajeswara Rao and another … Petitioners

And

Special Tribunal Constituted under
A.P. Land Grabbing (Prohibition) Act,
Warangal and eight others … Respondents

:: ORDER ::

Counsel for the petitioners : Sri O. Manohar Reddy

Counsel for respondent No.1 : Government Pleader for Revenue

Counsel for respondent No.2 : Sri K.V. Bhanu Prasad

Counsel for Respondent Nos.3 to 9: None appeared

14th FEBRUARY, 2006

Per G. Bhavani Prasad, J

Feeling aggrieved by order dated 19-12-2005 passed by the Principal District Judge, Warangal (hereinafter referred to as 'the Special Tribunal') whereby he dismissed the application filed by the petitioners under Section 7-A(1) of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short 'the Act') read with Section 151 and Order VII, Rule 11 of the Code of Civil procedure for making preliminary enquiry on the issue of applicability of the Act to the land in question, the petitioners have filed this petition under Article 226 of the Constitution.

Respondent No.2 claimed to have purchased 350 square yards of plot No.20 in S.No.1089 of Hanamkonda under a registered sale deed dated 12.10.1984 from Nellutla Kanakaiah, the original owner. He filed a petition before the Special Tribunal claiming that the petitioners have illegally interfered with his possession and unlawfully occupied his plot of land. The application filed by respondent No.2 was registered as L.G.C.No.1 of 2001. He further claimed that writ petitioners (respondents 1 and 2 in LGC) have raised unauthorised constructions in his land. In the counter filed by the petitioners, they claimed that their father purchased plot No.21 under a registered sale deed dated 1.5.2004 and the same is in their possession since then.

During the pendency of the petition filed by respondent No.2, the Special Tribunal appointed an advocate-commissioner to record evidence of respondent No.2 and his witnesses. Respondent No.2 was examined and partly cross-examined by the advocate of the petitioners. At that stage, the petitioners filed I.A.No.66 of 2004 requesting the Special Tribunal to hold a preliminary enquiry in respect of the applicability of the Act before enquiring into L.G.C.No.1 of 2001. They pleaded that the Special Tribunal does not have the jurisdiction to entertain the petition filed by 1respondent No.2.

The Special Tribunal by the impugned order observed that both parties are claiming to have purchased the property from the same vendor claiming their respective purchases to be genuine and the purchase by the other party to be fraudulent. The Special Tribunal noted that an advocate commissioner was appointed to record the evidence of the petitioner and his witnesses and that the petitioner was examined in chief and partly cross-examined by the respondents. It was, therefore, of the opinion that at this stage, after commencement of the trial, it is not proper to hold a preliminary enquiry. Consequently, it dismissed the petition as being devoid of any grounds.

In the affidavit filed by petitioner No.1 Sri Puppala Rajeswara Rao in support of the writ petition, it has been averred that the land in dispute was purchased by their father and, therefore, the allegation of land grabbing was totally unfounded. It has been further averred that the petition filed by respondent No.2 does not disclose any ingredient which may constitute ‘land grabbing’ and, therefore, the Special Tribunal does not have the jurisdiction to entertain the same. Still further, it has been further

averred that merely in making application cannot justify dismissal thereof.

Sri O. Manohar Reddy, the learned counsel for the writ petitioners strenuously contended that on the allegations made by the petitioner in the land grabbing case, no act of land grabbing within the meaning of Section 2(e) of the Act can be said to have been made out and the writ petitioners cannot be considered to be land grabbers within the meaning of Section 2(d) of the Act. He argued that the writ petitioners will suffer great prejudice if the Special Tribunal proceeds with the enquiry and decides the land grabbing case in view of the statutory burden of proof envisaged by Section 10 of the Act.

The learned counsel for the 2nd respondent/petitioner in L.G.C.No.1 of 2001 defended the impugned order and submitted that at the belated stage after the evidence in the land grabbing case is being recorded, there is no justification to raise the question of jurisdiction, and the Special Tribunal rightly dismissed the petition, as the jurisdictional issue can be gone into at the time of final adjudication.

We have considered the submissions of the learned counsel and carefully perused the record.

L.G.C.No.1 of 2001 on the file of the Special Tribunal constituted under the Act at Warangal, was filed on 22.2.2000. The writ petitioners filed counter and denied the allegations made in the petition. After considering rival pleadings, the Special Tribunal appointed advocate-commissioner for recording evidence of respondent No.2. In the midst of recording of evidence, the writ petitioners filed I.A.No.66 of 2004. In his reply to the I.A., respondent No.2 specifically pleaded that he was partly cross-examined by the advocate for respondent No.2 after taking several adjournments. He pointed out that the writ petitioners had raised some objections to the marking of documents and avoided cross-examination on the pretext that their objections in that regard should be decided as a preliminary issue and it was only after the Special Tribunal expressed its displeasure at the dilatory tactics that the petitioners appeared for cross-examination.

In our opinion, the reasons assigned by the Special Tribunal for refusing to entertain the petition filed by the present petitioners under Section 7-A(1) of the Act read with section 151 and Order VII, Rule 11 of the Code of Civil Procedure do not suffer from any patent legal infirmity and we do not find it to be a fit case for exercise of power

by this Court under Article 226 of the Constitution because no failure of justice has been occasioned by dismissal of their application.

The matter deserves to be considered from another angle. Under Section 7-A(2) of the Act, the Special Tribunal shall, in the trial of cases before it, follow the procedure prescribed in the Code of Civil Procedure, 1908 save as otherwise provided in the special Act. The specific provisions of the Code of Civil Procedure, 1908 including Section 21 and the principles settled thereunder make it incumbent that any objection as to the jurisdiction should be taken at the earliest possible opportunity before the settlement of the issues for trial and unless there has been a consequent failure of justice, belated objections as to jurisdiction will not be entertained. The Special Tribunal has specifically observed in the impugned order that after the 2nd respondent herein was partly cross-examined, it is not proper to hold a preliminary enquiry after the commencement of the trial and in the absence of any material on record to show that any such objection was taken at the earliest possible opportunity, and, in the absence of any reason indicated for the delay in raising the objection, the claim of the writ petitioners to have the jurisdictional issue decided as a preliminary issue, cannot be sustained.

It is not as though the claims of the writ petitioners that the allegations of the 2nd respondent herein do not attract the definitions of 'land grabbing' or 'land grabber' under the Act, can be ex facie accepted before the disputed questions of fact about the genuineness or otherwise of the respective sale deeds relied on by the parties are decided on merits, which decision can be only after full-fledged trial.

There is another reason for our disinclination to entertain the writ petition. The petitioners have deliberately refrained from placing on record the counter filed by them to the petition filed by respondent No.2. This appears to have been done to keep the Court in dark about the actual case set up by them before the Special Tribunal.

For the reasons stated above, we hold that the petitioners have failed to make out a case for interference under Article 226 of the Constitution of India and the writ petition is liable to be dismissed. Ordered accordingly.

G. BHAVANI PRASAD, J

14th February, 2006

G.S. SINGHVI, CJ

Svv/vtv